

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET A. LAFKO  
Supervising Deputy Attorney General  
3 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061

8 Attorneys for Complainant  
9

10 **BEFORE THE**  
**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3037

14 RODOLFO GOMEZ, TCH  
115 E 4th St  
15 National City, CA 91950

**DEFAULT DECISION**  
**AND ORDER**

16 Pharmacy Technician Registration No. TCH  
52062

[Gov. Code, §11520]

17 Respondent.  
18

19 FINDINGS OF FACT

20 1. On or about March 12, 2007, Complainant Virginia Herold, in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
22 filed Accusation No. 3037 against Rodolfo Gomez, TCH (Respondent) before the Board of  
23 Pharmacy.

24 2. On or about December 17, 2003, the Board of Pharmacy (Board) issued Pharmacy  
25 Technician Registration No. TCH 52062 to Respondent. The registration was in full force and  
26 effect at all times relevant to the charges brought herein and will expire on February 28, 2009,  
27 unless renewed.

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1           3.       On or about March 15, 2007, Tess Bautista, an employee of the Department of  
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. 3037, Statement to  
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 1115 E  
5 4th St, National City, CA 91950. A copy of the Accusation, the related documents, and  
6 Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

7           4.       Service of the Accusation was effective as a matter of law under the provisions of  
8 Government Code section 11505, subdivision (c).

9           5.       On or about March 16, 2007, the certified mailing was signed; the first class  
10 mailing has not been returned." A copy of the green postal receipt document is attached hereto as  
11 exhibit B, and incorporated herein by reference.

12           6.       Government Code section 11506 states, in pertinent part:

13           "(c) The Respondent shall be entitled to a hearing on the merits if the Respondent files a  
14 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
15 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
16 Respondent's right to a hearing, but the agency in its discretion may nevertheless grant a  
17 hearing."

18           7.       Respondent failed to file a Notice of Defense within 15 days after service upon  
19 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
20 No. 3037.

21           8.       California Government Code section 11520 states, in pertinent part:

22           "(a) If the Respondent either fails to file a notice of defense or to appear at the hearing,  
23 the agency may take action based upon the Respondent's express admissions or upon other  
24 evidence and affidavits may be used as evidence without any notice to Respondent."

25           9.       Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on  
27 Respondent's express admissions by way of default and the evidence before it, contained in  
28 exhibits A, B and C, finds that the allegations in Accusation No. 3037 are true.

1           10.     The total costs for investigation and enforcement are \$933.75 to April 17, 2007.

2                               DETERMINATION OF ISSUES

3           1.     Based on the foregoing findings of fact, Respondent Rodolfo Gomez, TCH has  
4 subjected his Pharmacy Technician Registration No. TCH 52062 to discipline.

5           2.     A copy of the Accusation and the related documents and Declaration of Service  
6 are attached.

7           3.     The agency has jurisdiction to adjudicate this case by default.

8           4.     The Board of Pharmacy is authorized to revoke Respondent's Pharmacy  
9 Technician Registration based upon the following violations alleged in the Accusation:

10          a.     Conviction of a substantially related crime, to wit, possession of marijuana for  
11 sale, a violation of Code section 4301(l);

12          b.     Violation of controlled substance law, a violation of Code section 4301(j) in  
13 conjunction with Health & Safety Code section 11359 (possession of marijuana  
14 for sale.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED May 21, 2007

By William Powers  
WILLIAM POWERS  
Board President

Exhibit A: Accusation No.3037, Related Documents, and Declaration of Service  
Exhibit B: Postal Return Documents  
Exhibit C: Certificate of Costs - Declaration of Susan Fitzgerald

4

Exhibit A

Accusation No. 3037,  
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MARGARET A. LAFKO  
Supervising Deputy Attorney General  
3 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
4 California Department of Justice  
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10 **BEFORE THE**  
11 **BOARD OF PHARMACY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3037

14 RODOLFO GOMEZ, TCH  
1115 E 4th St  
15 National City, CA 91950

**A C C U S A T I O N**

16 Pharmacy Technician Registration No. TCH  
52062

17 Respondent.  
18

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
22 capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer  
23 Affairs.

24 2. On or about December 17, 2003, the Board of Pharmacy issued Pharmacy  
25 Technician Registration Number TCH 52062 to Rodolfo Gomez, TCH (Respondent). The  
26 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on February 28, 2009, unless renewed.  
28

## JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

A. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

". . . .

"(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

". . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a

1 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
2 or indictment. (Emphasis added.)

3 ". . . ."

4 B. Section 118, subdivision (b), of the Code provides that the expiration of a license  
5 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
6 within which the license may be renewed, restored, reissued or reinstated.

7 C. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations  
9 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

11 4. This Accusation also refers to California Health and Safety Code (H&S Code)  
12 section 11350(a) which provides that it is a crime to possess a controlled substance unless upon  
13 the written prescription of certain health care professionals.

14 5. California Code of Regulations, title 16, section 1770, states:

15 "For the purpose of denial, suspension, or revocation of a personal or facility license  
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
17 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
18 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
19 licensee or registrant to perform the functions authorized by his license or registration in a  
20 manner consistent with the public health, safety, or welfare."

21 **CONTROLLED SUBSTANCES**

22 6. Heroin is a Schedule I controlled substance pursuant to H&S Code §11054.

23 7. Marijuana is a Schedule I controlled substance pursuant to H&S Code §11054.

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1 **CHARGES AND ALLEGATIONS**

2 **First Cause for Discipline**

3 **(Unprofessional Conduct: March 8, 2006 Conviction of a Substantially**  
4 **Related Crime - Incident Date: 12/7/05)**

5 8. Respondent is subject to disciplinary action under Code section 4301(l) for  
6 conviction of a crime substantially related to the qualifications, functions, or duties of a  
7 pharmacy technician, as more particularly alleged below:

8 A. On or about January 10, 2006, in San Diego Superior Court Case No. **CS 198666**,  
9 *People v. Rodolfo Lorenzo Gomez*, Respondent pled guilty to a felony violation of H&S Code  
10 section 11359 (possession of marijuana for sale).

11 B. At the time of sentencing, among other conditions, Respondent was sentenced to 3  
12 years formal probation; 180 days in jail, stayed; 30 days public works service; and various fines.

13 C. The record of conviction is conclusive evidence, without more, of unprofessional  
14 conduct under Pharmacy Board law because the crime concerns violation of a state law  
15 regulating controlled substances (to wit, H&S Code §11359).

16 D. When stopped by the National City police on December 7, 2005, Respondent  
17 attempted to dispose of a baggie which subsequently was found to contain over 240 grams of  
18 marijuana. He also possessed at the time an electronic scale and two cell phones.

19 **Second Cause for Discipline**

20 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

21 9. Respondent is subject to disciplinary action under section 4301(j) in conjunction  
22 with H&S Code section 11359 in that his conviction establishes his violation of a state statute  
23 that regulates controlled substances, as more particularly alleged in paragraph 8 above and  
24 incorporated here by reference.

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1 placard. Respondent admitted to San Diego Superior Court that he had possessed a useable  
2 amount of heroin.

3 **Fourth Cause for Discipline**

4 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

5 11. Respondent is subject to disciplinary action under section 4301(j) in conjunction  
6 with H&S Code section 11350(a) in that his conviction establishes his violation of a state statute  
7 that regulates controlled substances, as more particularly alleged in paragraph 10 above and  
8 incorporated here by reference.

9 **PRAYER**

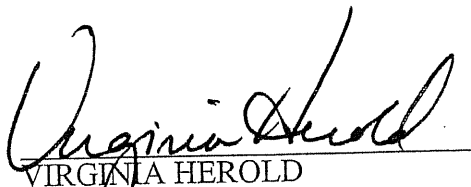
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52062,  
13 issued to Rodolfo Gomez, TCH;

14 2. Ordering Rodolfo Gomez, TCH to pay the Board of Pharmacy the reasonable  
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
16 Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 3/12/07

19  
20   
21 VIRGINIA HEROLD  
22 Executive Officer  
23 Board of Pharmacy  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant  
27  
28

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET ANN LAFKO  
Supervising Deputy Attorney General  
3 SUSAN L. FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
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**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 RODOLFO GOMEZ, TCH

14 Respondent.

Case No. 3037

**STATEMENT TO RESPONDENT**

[Gov. Code §§ 11504, 11505(b)]

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16  
17 TO RESPONDENT:

18 Enclosed is a copy of the Accusation that has been filed with the Board of  
19 Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

20 Unless a written request for a hearing signed by you or on your behalf is delivered  
21 or mailed to the Board, represented by Deputy Attorney General Susan L. Fitzgerald, within  
22 fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you,  
23 you will be deemed to have waived your right to a hearing in this matter and the Board may  
24 proceed upon the Accusation without a hearing and may take action thereon as provided by law.

25 The request for hearing may be made by delivering or mailing one of the enclosed  
26 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided  
27 in section 11506 of the Government Code, to

28 ///

1 Susan L. Fitzgerald  
2 Deputy Attorney General  
3 110 West "A" Street, Suite 1100  
4 San Diego, California 92101

5 P.O. Box 85266  
6 San Diego, California 92186-5266.

7 You may, but need not, be represented by counsel at any or all stages of these  
8 proceedings.

9 The enclosed Notice of Defense, if signed and filed with the Board, shall be  
10 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any  
11 objection to the form of the Accusation unless you file a further Notice of Defense as provided in  
12 section 11506 of the Government Code within fifteen (15) days after service of the Accusation  
13 on you.

14 If you file any Notice of Defense within the time permitted, a hearing will be held  
15 on the charges made in the Accusation.

16 The hearing may be postponed for good cause. If you have good cause, you are  
17 obliged to notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San  
18 Diego, CA 92101, within ten (10) working days after you discover the good cause. Failure to  
19 notify the Office of Administrative Hearings within ten (10) days will deprive you of a  
20 postponement.

21 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are  
22 enclosed.

23 If you desire the names and addresses of witnesses or an opportunity to inspect  
24 and copy the items mentioned in section 11507.6 of the Government Code in the possession,  
25 custody or control of the Board you may send a Request for Discovery to the above designated  
26 Deputy Attorney General.

#### 27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

28 It may be possible to avoid the time, expense and uncertainties involved in an  
administrative hearing by disposing of this matter through a stipulated settlement. A stipulated  
settlement is a binding written agreement between you and the government regarding the matters

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the  
2 Board of Pharmacy but, once approved, it would be incorporated into a final order.

3 Any stipulation must be consistent with the Board's established disciplinary  
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the  
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state  
6 agency bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing,  
8 or if you have any questions, you or your attorney should contact Deputy Attorney General Susan  
9 L. Fitzgerald at the earliest opportunity.

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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RODOLFO GOMEZ, TCH

Respondent.

Case No. 3037

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name \_\_\_\_\_

Respondent's Signature \_\_\_\_\_

Respondent's Mailing Address \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

Respondent's Telephone Number \_\_\_\_\_

**Check appropriate box:**

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name \_\_\_\_\_

Counsel's Mailing Address \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

Counsel's Telephone Number \_\_\_\_\_

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

80120815.wpd



**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RODOLFO GOMEZ, TCH

Respondent.

Case No. 3037

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

80120815.wpd

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET ANN LAFKO  
Supervising Deputy Attorney General  
3 SUSAN L. FITZGERALD, State Bar No. 112278  
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**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 RODOLFO GOMEZ, TCH

14 Respondent.

Case No. 3037

**REQUEST FOR DISCOVERY**

[Gov. Code § 11507.6]

15  
16  
17 TO RESPONDENT:

18 Under section 11507.6 of the Government Code of the State of California, parties  
19 to an administrative hearing, including the Complainant, are entitled to certain information  
20 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the  
21 Government Code concerning such rights is included among the papers served.

22 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU  
23 ARE HEREBY REQUESTED TO:

- 24 1. Provide the names and addresses of witnesses to the extent known to the  
25 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and  
26 2. Provide an opportunity for the Complainant to inspect and make a copy of any of  
27 the following in the possession or custody or under control of the Respondent:

28 ///

1           a.       A statement of a person, other than the Respondent, named in the initial  
2 administrative pleading, or in any additional pleading, when it is claimed that the act or  
3 omission of the Respondent as to this person is the basis for the administrative  
4 proceeding;

5           b.       A statement pertaining to the subject matter of the proceeding made by any  
6 party to another party or persons;

7           c.       Statements of witnesses then proposed to be called by the Respondent and  
8 of other persons having personal knowledge of the acts, omissions or events which are the  
9 basis for the proceeding, not included in (a) or (b) above;

10          d.       All writings, including but not limited to reports of mental, physical and  
11 blood examinations and things which the Respondent now proposes to offer in evidence;

12          e.       Any other writing or thing which is relevant and which would be  
13 admissible in evidence, including but not limited to, any patient or hospital records  
14 pertaining to the persons named in the pleading;

15          f.       Investigative reports made by or on behalf of the Respondent pertaining to  
16 the subject matter of the proceeding, to the extent that these reports (1) contain the names  
17 and addresses of witnesses or of persons having personal knowledge of the acts,  
18 omissions or events which are the basis for the proceeding, or (2) reflect matters  
19 perceived by the investigator in the course of his or her investigation, or (3) contain or  
20 include by attachment any statement or writing described in (a) to (e), inclusive, or  
21 summary thereof.

22               For the purpose of this Request for Discovery, "statements" include written  
23 statements by the person, signed, or otherwise authenticated by him or her, stenographic,  
24 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,  
25 and written reports or summaries of these oral statements.

26               YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for  
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which

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1 is privileged from disclosure by law or otherwise made confidential or protected as attorney's  
2 work product.

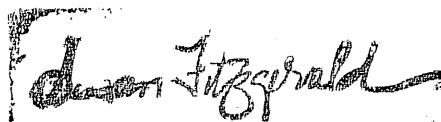
3 Your response to this Request for Discovery should be directed to the undersigned  
4 attorney for the Complainant at the address on the first page of this Request for Discovery **within**  
5 **30 days after service** of the Accusation.

6 Failure without substantial justification to comply with this Request for Discovery  
7 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30  
8 of the Government Code.

9 DATED: March 14, 2007

10 EDMUND G. BROWN JR., Attorney General  
11 of the State of California

12 MARGARET ANN LAFKO  
13 Supervising Deputy Attorney General

14 

15 SUSAN L. FITZGERALD  
16 Deputy Attorney General

17 Attorneys for Complainant

18 80120815.wpd  
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**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7**  
**PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

\*\*\*\*\*

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**  
(Separate Mailings)

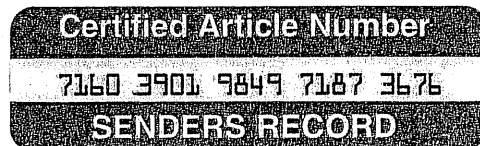
Case Name: **In the Matter of the Accusation Against: Rodolfo Gomez, TCH**  
Case No.: **3037**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

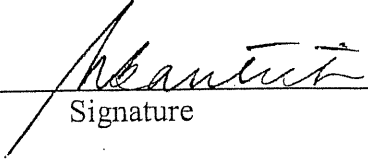
On March 14, 2007, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Rodolfo Gomez, TCH**  
**1115 E 4<sup>th</sup> Street**  
**National City, CA 91950**



I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 14, 2007, at San Diego, California.

\_\_\_\_\_  
Tess Bautista  
Declarant

  
\_\_\_\_\_  
Signature

cc: Virginia Herold, Interim Executive Officer, Board of Pharmacy - Sacramento



Exhibit B  
Postal Receipt Document

7160 3901 9849 7187 3676

**TO:** Rodolfo Gomez  
1115 E 4<sup>th</sup> Street  
National City, CA 91950

**SENDER:** Susan L. Fitzgerald

**REFERENCE:** SD2006802737

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

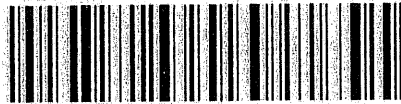
US Postal Service

# **Receipt for Certified Mail**

No Insurance Coverage Provided  
Do Not Use for International Mail

POSTMARK OR DATE

2. Article Number



7160 3901 9849 7187 3676

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Rodolfo Gomez  
1115 E 4<sup>th</sup> Street  
National City, CA 91950

## **COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) <i>MARTIN GOMEZ</i>	B. Date of Delivery <i>3-16-07</i>
C. Signature <i>[Signature]</i>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SD2006802737  
Susan L. Fitzgerald

PS Form 3811, January 2005

Domestic Return Receipt

Exhibit C

Certification of Costs - Declaration of Susan Fitzgerald

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARGARET A. LAFKO  
Supervising Deputy Attorney General  
3 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061  
8

9 Attorneys for Complainant

10 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3037

13 RODOLFO GOMEZ, TCH

14 Respondent.

**CERTIFICATION OF COSTS:**  
**DECLARATION OF SUSAN**  
**FITZGERALD**

15 [Business and Professions Code section  
16 125.3]  
17  
18

19 I, SUSAN FITZGERALD, hereby declare and certify as follows:

20 1. I am a Deputy Attorney General employed by the California Department of Justice  
21 (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in the  
22 Civil Division of the Office. I have been designated as the representative to certify the costs of  
23 prosecution by DOJ and incurred by the Board of Pharmacy in this case. I make this certification  
24 in my official capacity and as an officer of the court and as a public employee pursuant to  
25 Evidence Code section 664.

26 2. I represent the Complainant, Virginia Herold, Executive Officer of the Board of  
27 Pharmacy, in this action. I was assigned to handle this case on or around November 17, 2006.

28 ///



**Cost-of-Suit Summary** As Of 04/17/2007  
Matter ID: SD2006802737 Date Opened: 12/01/2006  
Description Gomez, Rodolfo, TCH

Total Legal Costs: \$933.75  
Cost-of-Suit: \$0.00  
Grand Total: \$933.75

Matter Time Activity Summary			Amount
Rate	Hrs Wrkd		

Professional Type: Attorney			
FY: 2006-2007			

\$158.00 5.75 \$908.50  
FY 2006-2007 Total: \$908.50  
Attorney Total: \$908.50

Professional Type: Legal Assistant			
FY: 2006-2007			

\$101.00 0.25 \$25.25  
FY 2006-2007 Total: \$25.25  
Legal Assistant Total: \$25.25

Total Legal Costs:	\$933.75
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Cost-of-Suit				
Entry #	Journal Date	Vendor #	Vendor	Amount
Client Agency				

FY:

Component Description:

Total: \$0.00  
FY Total: \$0.00  
Client Agency Total: \$0.00

Cost-of-Suit:	\$0.00
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\* Denotes soft costs which are not included in totals.